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Attorneys for Plaintiff
HYPER ICE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

HYPER ICE, INC., a California
corporation,

Plaintiff,

vs.

THERABODY, INC.,

Defendant.

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Trial Date: None Set

1 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28
2 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this
3 District and has a regular and established place of business in this District.

4 **GENERAL ALLEGATIONS**

5 9. The '174 Patent is entitled "Communication Devices, Methods, and
6 Systems" and issued on July 16, 2024, claiming priority to Application No.
7 18/526,980, filed on December 1, 2023, and to, *inter alia*, Provisional Application
8 No. 62/575,951, filed on October 23, 2017. A true and correct copy of the '174 Patent
9 is attached hereto as Exhibit 1.

10 10. Matthew Robert Leaper is the named inventor of the inventions disclosed
11 in the '174 Patent. DataFeel Inc. is the assignee of the '174 Patent, and Hyper Ice,
12 Inc. is an exclusive licensee that has been granted the express, irrevocable right to,
13 *inter alia*, sublicense, enforce, and defend the '174 Patent.

14 11. This action arises out of Defendant's direct infringement of the '174
15 Patent.

16 12. Defendant offers for sale and/or sells products that infringe the '174
17 Patent, including but not limited to the TheraFace PRO, The Complete TheraFace
18 Bundle (TheraFace PRO with TheraFace Hot and Cold Rings), and the Theragun PRO
19 Plus (collectively "the Accused Products"). Attached as Exhibits 2-4 are claim charts
20 for the Accused Products.

21 **COUNT 1 – PATENT INFRINGEMENT**

22 13. Hyperice incorporates by reference the allegations in Paragraphs 1-12
23 above.

24 14. Defendant has infringed and continues to infringe the '174 Patent under
25 the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for
26 sale and/or sells the Accused Products.

27 15. Defendant infringes at least Claim 17 of the '174 Patent. The Accused
28

1 Products are battery-powered devices that include the following claim limitations.
2 Hyperice believes that the Accused Products literally meet the following claim
3 limitations. If any of the limitations are not literally met, the Accused Products meet
4 the limitations under the doctrine of equivalents, because they perform the same
5 function in substantially the same way to achieve substantially the same result, and/or
6 because the relevant structures and functions of the infringing products are
7 insubstantially different from the claimed limitation:

8 16. A treatment device, comprising:

- 9 a. a body provided with a power source and a processing unit
10 configured to receive input data and generate a control signal
11 based on the input data, the body including a skin contacting
12 surface maintainable against skin of a user by a force applied by a
13 hand of the user when gripping the body; and
14 b. a first energy generator element and a second energy generator
15 element coupled to the body, the first and second energy generator
16 elements being independently operable to convert electricity from
17 the power source into a first energy type and a second energy type,
18 respectively, and direct the first and second energy types toward
19 an area of skin, the first energy generator element including an
20 impact generator element having a tissue contact surface that is
21 linearly actuatable along an axis to contact and cause
22 corresponding physical movement of the area of skin;
23 c. wherein the processing unit is operable to output an optical signal
24 on a display that is observable by eyes of the user, the output
25 corresponding to the control signal.

26 17. Defendant's infringement of the '174 Patent has caused, and will
27 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled
28 to an award of damages adequate to compensate it for the infringement in an amount

1 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284.

2 Hyperice is also entitled to recover prejudgment interest, post-judgment interest, and
3 costs.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Hyperice prays for the following relief:

6 1. That this Court enter judgment of infringement of the '174 Patent in
7 favor of Hyperice and against Defendant;

8 2. That this Court award Hyperice compensatory damages for infringement
9 of the '174 Patent, as well as interest thereon;

10 3. That this Court award Hyperice its costs of suit;

11 4. That this Court award Hyperice increased damages in an amount not less
12 than three times the damages assessed for Defendant's infringement of the '174
13 Patent, in accordance with 35 U.S.C. §284.

14 5. That this Court declare this an exceptional case under 35 U.S.C. §285
15 and award Hyperice its attorneys' fees and any other costs incurred in connection with
16 this action;

17 6. That this Court award Hyperice prejudgment and post-judgment interest;
18 and

19 7. That this Court grant such further relief as the Court deems just and
20 proper.
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1 DATED: September 19, 2024

MILLER BARONDESS LLP

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15 Attorneys for Plaintiff

16 HYPER ICE, INC.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
HYPER ICE, INC. hereby demands a trial by jury of all issues triable by jury.

DATED: September 19, 2024 **MILLER BARONDESS LLP**

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